



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

December 22, 2008

Dinah Minter
Orange County Transportation Agency
550 South Main Street
Orange, CA 92863-1584

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE FULLERTON TURNBACK FACILITY, CITIES OF FULLERTON AND ANAHEIM, ORANGE COUNTY (ACOE REFERENCE NO. SPL-2008-01063-JPL)

Dear Ms. Minter:

On September 4, 2008, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for railway improvements associated with the construction of a turnback facility at the Fullerton Transportation Center in the cities of Fullerton and Anaheim. This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments ("Basin Plan"):

Project Description: Construction of one terminal rail track, storage track, and crossovers and turnouts. The southern platform at the Fullerton Transportation Center will be extended and several communications buildings will be relocated. The work will include the extension of a reinforced concrete box culvert in Balcom Channel by 41 feet to accommodate the new rail track. The work will take place within Section 34 of Township 3 South, Range 10 West, of the U.S. Geological Survey *Anaheim, California*, 7.5-minute topographic quadrangle map (33 deg. 52 min. 07 sec. N/ -117 deg. 55 min. 20 sec. W).

Receiving water: Balcom Channel, tributary to Fullerton Creek Channel.

Fill area: 0.015 acre of permanent impact to a concrete flood control channel (41 linear feet).

Dredge/Fill volume: N/A

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Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 14.

You have proposed to mitigate water quality impacts as described in your Certification application. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- Discharges of storm water runoff from the new rail area will be filtered through a sand-filter media bed prior to discharge into Fullerton Channel. The filter media bed will be covered by a layer of track ballast.
- Additional Best Management Practices ("BMPs") will be specified in the project Water Quality Management Plan ("WQMP") and/or Storm Water Pollution Prevention Plan ("SWPPP").

Offsite Water Quality Standards Mitigation Proposed:

- No offsite water quality standards mitigation is proposed.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of Order No. R8-2002-0011, commonly known as the Riverside County Municipal Storm Water Permit. Order No. R8-2002-0011 requires that you substantially comply with the requirements of State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, including the preparation of a SWPPP.

Construction de-watering discharges may be regulated under Regional Board Order No. R8-2003-0061, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimus) Threat to Water Quality. For more information, please review Order No. R8-2003-0061 at: www.waterboards.ca.gov/santaana/pdf/03-61.pdf.

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. Pursuant to the California Environmental Quality Act ("CEQA"), the Orange County Transportation Authority ("OCTA") adopted a Mitigated Negative Declaration on May 12, 2008 (State Clearinghouse No. 2007121129). Pursuant to California Code of Regulations, Title 14, Section 15096, subdivision (f), the Regional Board must consider the environmental effects of the project as shown in the associated negative declaration prior to reaching a decision on the project. The Regional Board has considered OCTA's Mitigated Negative Declaration in the issuance of this Certification and finds that changes or alterations have been required, or



incorporated into the proposed project, which avoid or mitigate impacts to water quality to a less than significant level.

This 401 Certification is contingent upon the execution of the following conditions:

- 1) The applicant must comply with the requirements of the Clean Water Act section 404 permit(s).
- 2) The proposed sand filter must be sized, designed, and constructed according to published engineering design criteria.
- 3) A copy of this Certification and any subsequent amendments must be maintained at the project site, available for inspection upon request, for the duration of the work.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. Violations of the conditions of this certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.



December 22, 2008

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at:
www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,

Kt v. Bittl

for GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Jason Lambert
State Water Resources Control Board, Office of Chief Counsel – David Rice
State Water Resources Control Board, DWQ-Water Quality Certification Unit – Bill Orme

U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and David Smith

Department of Fish and Game, South Coast Region LSAA Program (SAA#1600-2008-0314-R5), 4949, Viewridge Ave., San Diego, CA 92123

APF:401/certifications/fullerton turnback 302008-21

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